

White Paper

Medicinal Cannabis Dispensaries in the City of Santa Barbara

“Thoughts and Suggested Amendments to Standing Ordinance”

Addressed to:

Mayor **Marty Blum**

Councilmember **Helene Schneider**

Councilmember **Iya G. Falcone**

Finance Committee, Chair **Roger L. Horton**

Mayor Pro Tempore **Dale Francisco**

Councilmember **Grant House**

Ordinance Committee, Chair **Das Williams**

City Attorney **Stephen Wiley**

Senior Planner **Danny Kato**

Planning Technician **Betsy Teeter**

Limiting the number of dispensaries:

One of the aspects of the ordinance that raises questions is that there are no set limits to the amount of dispensaries that can exist within the City of Santa Barbara. As it stands now the limit will be determined by the radius of dispensaries to schools, parks and to each other in the designated zones. It is recommended that a limit be set for the quantity of permits issued.

Potential Problem:

Many applications are being received by the City's Planning Department. If limits are to be set, then who receives the permits? The following might help in determining the criteria essential for selecting applicants:

Is the applicant a resident of the City of Santa Barbara and for how long?

Did the person or persons move to Santa Barbara to set up shop as you will?

Is there a true medical aspect to the proposed dispensary of the applicant?

After determining allowable number of dispensaries, then which of applicants will be turned away. Most people will simply pack up and go away. The worst that could happen is that the denied applicant, based on a recent amendment to the ordinance setting limits, could sue the City for expenses accrued. This is improbable, but must be taken into consideration.

Revenue for the City of Santa Barbara:

As changes and amendments to the existing ordinance are considered, this would be an ideal time to create a revenue model for the City. A tax of let's say \$20.00 per \$1,000.00 of gross receipts is very realistic and most of the dispensaries would abide by a voluntary or perhaps even a mandated tax structure for their dispensary.

Just like hotels and other businesses based in Santa Barbara provide revenue for the City, there is no reason that the City can't impose a tax with this ordinance.

One could use the language of a "Fee" instead of taxes if the nomenclature is of legal consideration.

Steve Wiley would be best suited to examine the legalities of an imposed fee as an amendment to the revised ordinance. If Mr. Wiley does not feel that the City can mandate such an action, then a ballot measure would be a remedy for accessing income from the dispensaries.

Attached you will find the full text of Oakland's Measure F. Measure F was a voter-passed tax rate for Cannabis Dispensaries based in the City of Oakland. The amount of the new tax imposed on the dispensaries is \$18.00 per \$1,000.00 of gross receipts. The measure was passed by over eighty percent of the voters.

The City of Santa Barbara's amended ordinance's new tax or fee of 2% as recommended above would save the time, trouble and cost of a Santa Barbara measure akin to Oakland's Measure F. Based on the City's voting record on both Proposition 215 and the City's Measure P, it is the assumption that if a measure such as Oakland's Measure F be placed on the ballot that a majority of the citizenry would vote it through, especially given our current economic situation.

Checks and Balances:

Notice of Illegal Resale Posted in Lobby of Each Dispensary

One of the main concerns of the community in general is the reselling of cannabis from a dispensary, especially to minors.

In order to deter patients of a collective dispensary from reselling their cannabis, the following is recommended.

That a sign be posted in the waiting room of the dispensary stating the following:

"As a patient of the Collective it is forbidding to resell your cannabis to anyone. If you are caught by the Dispensary or Law Enforcement, or if we are notified of such an action, then you will no longer be permitted to purchase cannabis from this or any other sanctioned dispensary in the City of Santa Barbara. A report of the

aforementioned violation will be furnished to the Santa Barbara Police Department, the City of Santa Barbara and all other permitted dispensaries.”

If such an action as reselling cannabis is verified, then that person will be banned and placed on a list furnished to the Police, the City and all other permitted dispensaries. If a dispensary is caught distributing to said person after a notice is issued, then they will be in violation of the ordinance and it is recommended that the dispensary be cited and fined \$1,000 (If a dispensary feels that they could be in jeopardy of losing their permit and being shut down due to violations, this action would help insure that these new imposed parameters be taken seriously - in effect encouraging the dispensaries to police themselves.)

If a second violation occurs either for reselling cannabis, or another infraction of the ordinance, then it is recommended that a \$5,000 fine be applied. As is the case with many things in life, applying the “three strikes and you’re out” policy can be a great deterrent. One would effectively lose their permit and be forced to shut down. The citation process to enforce responsible behavior is a strong remedy for keeping everything in check.

Departments within the City of Santa Barbara currently conduct sting operations for sales of alcohol and cigarettes to minors. It is recommended that that same principle be applied to dispensaries. The sting would help enforce the following: Does the patient in question possess a current and valid Doctor’s recommendation? Is that person known to be reselling their cannabis and no action is taken on behalf of the dispensary in question?

Proposed amendments or changes:

Section 28.80.020, Definitions, should have a new category for Patients Sanctioned for Resale, which could say something like “Patient identified as having engaged in illegal resale activities of prescribed and assigned medical marijuana”

Section 28.80.040, Business Tax Liability would require the language for the proposed tax or fee of \$20.00 per \$1,000 of gross receipts.

Section 28.80.050 Dispensary Permit Fees should have a new item which would speak to the city establishing a permit fee for any new, renewal or transfer of a permit. The fee, which obviously needs some thought, could easily be simplified to follow a:

1. New license
2. Renewed license (captures those clubs that were grandfathered in.)
3. License Transfer Request (but if there was a problem operator, it might be worthwhile for the City to establish additional conditions for those locations that are problematic.)

Section 28.80.070, Operating Requirements for Dispensaries would be the area I presume that would incorporate the resale sanctions, including the Posting of Patient Notice Forbidding Resale. There would need to be a new section dealing with sanctions and violation fees against operators.

Section 28.80.080, Dispensary Permit Application would also need to have a reference to paying all appropriate permitting fees

Section 28.80.090 Criteria for Review of Permit would also need to add a new Item 14 that addresses compliance to the fee process above.

Full Text of Oakland's Measure F

ORDINANCE AMENDING THE CITY OF OAKLAND'S BUSINESS TAX TO ESTABLISH A NEW TAX RATE FOR "CANNABIS BUSINESSES"

WHEREAS, through the passage of Proposition 215, the ...- voters of California authorized the use of cannabis for medical purposes in 1996; and

WHEREAS, by a 79% vote in favor of the proposition, the voters of Oakland overwhelmingly approved Proposition 215; and

WHEREAS, the City Council of the City of Oakland has adopted medical cannabis permitting regulations to prevent nuisance, provide for effective controls, enable medical cannabis patients to obtain cannabis from safe sources, and provide appropriate licensing and revenues for the City in a manner consistent with state law; and

WHEREAS, every person engaged in business activity in the City of Oakland is required to obtain a business tax certificate and to pay the City's business tax; and

WHEREAS, the City of Oakland has a business tax system which applies to all businesses in the City, and which contains a list of categories of types of businesses, and provides for the collection of business taxes at specified rates based on the classifications of the businesses operating in the City; and

WHEREAS, because permitted medical cannabis dispensaries did not exist at the time the business tax system was created, Oakland's current business tax category list does not contain a specific tax category for cannabis businesses; and

WHEREAS, cannabis businesses are currently taxed under the business classification of general retail at a business tax rate of \$1.20 per \$1,000 of gross receipts, rather than under a specific category; and

WHEREAS, under the newly created business classification cannabis businesses will be taxed at a rate of \$18 per \$1,000; and

WHEREAS, accordingly, the City Council of the City of Oakland desires to amend Chapter 5.04, adding section 5.04.480 to the Oakland Municipal; and

WHEREAS, all revenues received from the tax will be deposited in the general fund of the City to be expended for general fund purposes; now, therefore, be it

RESOLVED: That the City Council of the City of Oak.. land does hereby request that the Board of Supervisors of Alameda County order the Special Municipal election, consistent with the provisions of state law; and be it

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby submit to the voters at the special election, not more than 88 days and not more than 150 days from the date of passage of this resolution, the text of the proposed ordinance, which shall be as follows; and be it

FURTHER RESOLVED: That each ballot used at said municipal election shall have printed therein, in addition to any other matter required by law the following:

ORDINANCE AMENDING THE OAKLAND MUNICIPAL CODE TO MODIFY THE BUSINESS TAX BY CREATING A NEW "CANNABIS' BUSINESS CLASSIFICATION

Be it ordained by the People of the City of Oakland:

Section 1. The Municipal Code is hereby amended to add, delete, or modify sections as set forth below (section numbers and titles are indicated in bold type; additions are indicated by underscoring and deletions are indicated by strike-through type; portions of the regulations not cited or not shown in underscoring or ~~strike-through~~ type are not changed).

Section 2. Code Amendment. Chapter 5.04 of the Oakland Municipal Code is hereby amended adding Section 5.04.480 to read as follows:

5.04.480 Cannabis.

A. Every person engaged in a cannabis business not otherwise specifically taxed by other business tax provisions of this chapter, shaH pay a business tax of eighteen dollars \$18 for each one thousand dollars (\$1,000.00) of gross receipts or fractional part thereof.

B. For the purpose of this section, "cannabis business" means business activity including, but not limited to, planting, cultivation, harvesting, . transporting , manufacturing, compounding, converting, processing, preparing, storing, packaging, wholesale, and/or retail sales of marijuana, any part of the plant Cannabis sativa L. or its derivatives.

Section 3. Severability. Should any provision of this Ordinance, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shaH have no effect on any other provision of this Ordinance or the application of this Ordinance to any other person or circumstance and, to that end, the provisions hereof are severable.

Section 4. California Environmental Quality Act Requirements. This Ordinance is exempt from the California Environmental Quality Act, Public Resources Code section 21000 et seq., including without limitation Public Resources Code section 21065, CEQA Guidelines

15378(b)(4) and 15061(b)(3), as it can be seen with certainty that there is no possibility that the activity authorized herein may have a significant effect on the environment.

Section 5. Majority Approval; Effective Date. This Ordinance shall be effective only if approved by a majority of the voters voting thereon and after the vote is declared by the City Council. The effective date of this Ordinance shall be January 1, 2010.

Section 6. Council Amendments. The City Council of the City of Oakland is hereby authorized to amend Section 5.04.480 of the Oakland Municipal Code as adopted by this Ordinance in any manner that does not increase the tax rate, otherwise constitute a tax increase for which voter approval is required by Article XIII C of the California Constitution or entirely dispense with the requirement for independent audits stated in Section 4.28.190.

FURTHER RESOLVED: That the City Council of the City of Oakland does hereby find and determine that pursuant to Article xmc, section 2(b) of the California Constitution the City Council of the City of Oakland has adopted a resolution declaring the existence of a fiscal emergency in the City of Oakland that necessitates asking the voters to approve the proposed medical cannabis tax before the next regular election of the Oakland City Council;